
JUDICIAL AND CONSTITUTIONAL VALIDITY OF NCLT – A LEGAL PERSPECTIVE

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ABSTRACT

Throughout some time, there was consideration of creating a quasi-judicial body just to resolve business conflicts. In **Durga Shankar Mehta v. Raghuraj Singh & Ors**¹, the judiciary ruled that the term "**Tribunal**" in **Article 136**² is not synonymous with "court," instead it refers to a body that has adjudicating authority and is formed by the government, with judicial functions being prioritized over managerial or administrative ones. In 1979, **the Sachar Committee** advocated the creation of a quasi-judicial Corporate Tribunal, similar to the Taxation Tribunal. But till **the Eradi Committee** suggested creating an individual tribunal to oversee the authority of Company Law Board, Board for Industrial and Financial Reconstruction, and Appellate Authority for Industrial and Financial Reconstruction, the process stalled.³ Therefore, the **Companies Amendment Act of 2002** gave rise to the "**National Company Law Tribunal and National Company Law Appellate Tribunal (NCLT/NCLAT)**". However, the NCLT's inception led to a lot of misunderstandings, which prevented it from becoming operational till 2016. In a series of lawsuits, the Tribunal's constitutional legitimacy was contested.⁴ The article seeks to ascertain the authority that the High Courts of India retain in relation to business disputes as well as the effectiveness of the National Courts of Justice (NCLTs), which are composed of both judicial and specialized individuals, in resolving disputes during the past five years.

Keywords: NCLT, Constitutionality, Madras Bar Association, MCA, Tribunals.

¹ 1954 AIR 520

² Constitution of India, 1949, art. 136

³ Abhirami Retheev, National Company Law Tribunals: Status of Constitutional Validity and Role in Dispute Resolution in the Light of Decided Cases, 2 *JUS CORPUS* L.J. 420 (2021)

⁴ Prachi Manekar Wazalwar., NCLT Powers Functions under Cos. Act, 2013., <http://lawstreetindia.com/experts/column?sid=164> (last updated Sep. 04, 2016).

METHODOLOGY

In addition to using empirical research, which is important to some extent, the author of this study will also utilize doctrinal and non-doctrinal research methodologies, mostly consisting of secondary sources. The author plan to cite other authors' papers that are listed in various journals in order to bolster their arguments. They also plan to conduct surveys using statistical methods and questionnaires to get feedback about various approaches to solving issues with the framework and what the needs of the general public are. Moreover, in depth research via various orders and notifications of the government.

INTRODUCTION

The state of India established the **Justice Eradi Committee in 1999** to review the legislation currently in place regarding a company's bankruptcy and dissolution. This took place in an attempt to make recommendations for alterations to the area to prevent any delays in the resolution of connected issues. The Eradi Committee had determined that the most significant cause of the prolonged delay in company liquidation was the abundance of cases pending in courts, amidst numerous other issues.⁵ In order to assist exhausted businesses in being revived and rehabilitated, the Committee came to the conclusion that a National Tribunal should be established. This tribunal would have the same rights and responsibilities as the **CLB, BIFR, AAIFR**, and High Courts under the **Sick Industrial Companies Act (SICA)**.⁶ In 2002, the SICA was struck down and the Companies Act was changed to implement the suggestions of the Eradi Committee. The legislation merged the BIFR, CLB, and court authorities. In 2002, the *Madras Bar Association* contested the legality of several of the Amendment's stipulations. Since then, the *Union of India and the Madras Bar Association*⁷ have been embroiled in a ten-year lawsuit that was finally resolved in 2015. A variety of challenges were made to the novel additions made by the 2002 Amendment to the Company Act. **Article 323B**⁸ was contested in addition to chapters 1B and 1C, raising questions about the legitimacy of the said tribunal as a whole. In 2004, the Madras HC maintained the legal standing of the Tribunals, but ruled that particular provisions were invalid based on the Basic Structure.⁹ In 2010, the

⁵ Subha Shree Pani, 'NCLT and NCLAT: The Victim of Judiciary-Executive Tug-of-War'(Taxmann)

⁶ Saarang Kaushik, National Company Law Tribunal (NCLT) under the Indian Company Law Regime, 22 SUPREMO AMICUS [93] (2020).

⁷ R Gandhi, President, Madras Bar Association v Union of India [2015] SCC Online SC 1094

⁸ Article 323B, Constitution of India, 1950

⁹ Sheela Rai, 'India's Tryst with Independent Tribunals and Regulatory Bodies and Role of the Judiciary, Journal of the Indian Law Institute'(JSTOR,201

Apex Court upheld the HC's assessment that certain sections violated the Basic Structure concept. It concluded that NCLT and NCLAT are legitimate entities under the Companies Act of 1956, as under rules' corrections.

The Madras Bar Association contested the Companies Law in 2013, arguing that the same sections that in recently enacted legislation plagued via the similar faults, despite the fact of the houses implementing the Act without correcting the Parts as directed by the Supreme Court. The Madras HC upheld the legitimacy of the “**Companies (Second Amendment) Act 2002**”, despite obstacles to its lawful reliability.¹⁰ The High Court did find specific sections of the Act to have been in violation of the fundamental legal arrangement of the division of authority as well as the sovereignty of the judiciary.¹¹ The State agreed to address a few the issues raised by the HC in a complaint to the Apex Court. In light of the aforementioned chain of court rulings and disagreements, the subsequent queries emerge:

- i. Are the suggested stipulations of the current enforced law of 2013 and the former Companies Act of 1956 in violation of the foundational framework doctrine?
- ii. Is the constitutionality of the NCLT and NCLAT established?

ANALYSIS OF THE CONSTITUTIONAL VALIDITY

S.V. Sampath Kumar v. Union of India¹² is an important instance that proved essential to the creation of the Tribunal. The Apex Court highlighted why there had been an increase in disputes and a "population explosion" following autonomy, overtaxing High Courts. In light of this, the establishment of a single-window agency was necessary to facilitate the prompt resolution of disputes.¹³ Therefore, ***"negating the fatal delay involved in company law proceedings will be made easier with the establishment of the autonomous tribunals"***.¹⁴

“Legislature is able to enact laws to establish NCLT”

¹⁰ Lanka Venkata Naga Muralidhar v Vestal Educational Services Private limited and Ors 3

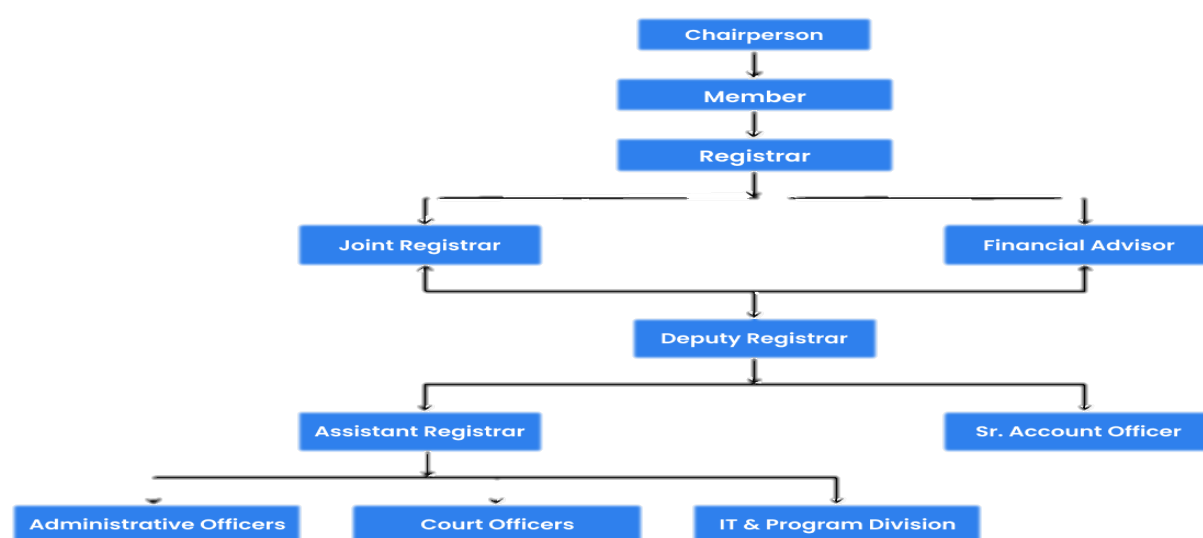
¹¹ Phoenix Arc Pvt Ltd. v Lalan Kumar Singh AIR 2021, SC 369

¹² S. V. Sampath Kumar v Union of India (1987) SCR (3) 233

¹³ Stuti Srivastava, 'The Constitutionality of NCLT and NCLAT: Madras Bar Association Case' (2021) Manupatra

¹⁴ S Ramesh v. South Travancore Hindu College Association, [2018] 206 Com 415 [NCLT] Chennai

"Articles 245¹⁵, 246¹⁶ and 247¹⁷ of the Constitution" represent the Parliament's authority to create institutions; that authority is unrestricted by Articles 323A¹⁸ and 323B¹⁹. The various rules whereby the legislature can establish tribunals are listed in Articles 323A and 323B. The two preceding provisions do not, nonetheless imply that the legislative body is prohibited from creating courts on any subjects that are not expressly addressed in the Parliament.²⁰ Therefore, since Articles 323A and 323B do not specifically address business-related issues such company resurrection, recovery, or closing up, the legislature nevertheless has the power by law to create NCLT.²¹



“The independence of the judiciary, the separation of powers, and the rule of law are all upheld by NCLT”

These values are not violated by the process of creating tribunals and granting them authority over judicial matters. Finding out if these judicial bodies themselves abide by and honor the foundational elements of “*Justice, Equity and Good Conscience*” and the division of authorities is all that really matters.²² The NCLT's membership²³ is limited by varying court review phases and qualifying requirements. In the near term, the Supreme Court will have the

¹⁵ Constitution of India 1950, article 245

¹⁶ Constitution of India 1950, article 246

¹⁷ Constitution of India 1950, article 247

¹⁸ Constitution of India 1950, article 323A

¹⁹ Constitution of India 1950, article 323B

²⁰ Vyapak Desai et al., 'Supreme Court upholds the constitutionality of National Company Law Tribunal' (2007) 3(3) India Law Journal

²¹ Jai Balaji Industries Limited v State Bank of India [2019] 1 WLC [SC] CVL 781

²² Arryan Mohanty, All about NCLAT: An Overview of Its Powers & Functions, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022-2023).

²³ Sagufa Ahmed v Upper Assam Plywood Products Pvt Ltd.³

ability to use all available checks and balances to supervise, keep an eye on, and guarantee that the functioning of the NCLT does not conflict with the values embodied in our Constitution.²⁴

LITERATURE REVIEW

Sr. no.	Name	Literature Review
1.	<i>“S. Deepika Devi, M. Kannappan, A Study On National Company Law Tribunal (2018)²⁵”</i>	The overall focus of the study focuses on the advantages and benefits of the NCLT within the CLB, with specific goals being the examination of the past developments that led to the NCLT's ratification or operation, the distribution of powers and responsibilities within the NCLT, and, finally, the emphasis on the NCLT's engaging in business oversight issues.
2.	<i>“Dr. Rupinder Katoch (2017), Insolvency and Bankruptcy Code, 2016: Features, Mechanism and Challenges in implementation²⁶”</i>	In order to improve the governance of cases, the writer reiterates the present view that the Code on Insolvency and Bankruptcy needs to be urgently reformed. The contributor also lists the difficulties facing the NCLT system, including an inadequate number of benches, an absence of time, a dearth of competent experts in the IBC, an absence of immediate audience who could influence the policy, and an absence of a component individuals on each bench. The database that is essential for obtaining financial data from borrowers is examined in detail in this study, which also expedites the procedure.

²⁴ Shubham Paliwal, The Constitutional Validity of the Establishment of NCLT and Its Role in Dispute Resolution, 3 JUS CORPUS L.J. 931 (2022).

²⁵ S. Deepika Devi, M. Kannappan, A Study On National Company Law Tribunal, 119 (17), INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS, 2018 723-734

²⁶ Dr. Rupinder Katoch (2017), Insolvency and Bankruptcy Code, 2016: Features, Mechanism and Challenges in implementation, 7 (9), INTERNATIONAL JOURNAL OF MANAGEMENT, IT & ENGINEERING, pp 71-89, September 2017

3.	<i>“Ali Amerjee, BIFR & NCLT: An Analysis of Tribunalization in India²⁷”</i>	Here, the writer discusses the topic of Indian firms wrapping up under the jurisdiction of the CLT and BIFR. Additionally, the study highlights NCLT resilience and advancements since its founding, drawing a wide comparison with BIFR and providing compelling examples and supporting data that the writer has thoroughly examined.
4.	<i>“Rahul Tiwari, A Review of NCLT vis-a-vis Section 231 of the Companies Act (2020)²⁸”</i>	This essay clarifies the intricacies of the NCLT, the institutions tasked with resolving disputes in instances of bankruptcy, and the rulings rendered by the Apex court and several superior courts. In accordance to the judgement in Madras Bar Association v. UOI, that affirmed the validity of the NCLT. The document lists the skills and experience of the NCLT's legal and special members as well as the composition of the staff, which included its head and nine other members.

CONCLUSION

In brief, the NCLTs have presided over the majority of the national high courts' authority in business disputes. These judicial bodies have no jurisdiction over any company-related cases, and are certainly not able to issue a stay in NCLT cases. Nonetheless, the High courts may use their innate authority within Article 226²⁹ in extraordinary situations, such as when NCLTs have exercised their jurisdiction above what is permitted or where there is a significant legal issue pertaining to the benefit of the public, national safety or stability. Furthermore, it has been demonstrated that company law tribunals are just as successful as civil courts. Apex Court have affirmed several of the tribunal's rulings. As a result, tribunals' capacity to make decisions are

²⁷ Ali Amerjee, BIFR & NCLT: An Analysis of Tribunalization in India, 4 COMPANY LAW JOURNAL, pp.1-22, (October, 2013)

²⁸ Rahul Tiwari, A Review of NCLT vis-a-vis Section 231 of the Companies Act, VIII, (V), RESEARCH CHRONICLER: INTERNATIONAL MULTIDISCIPLINARY REFEREED PEER REVIEWED INDEXED RESEARCH JOURNAL, July 2020

²⁹ Constitution of India, 1950, article 226

comparable to those of civil courts, even though they serve as high courts' supplementary rather than replacement.³⁰ This is definitely encouraging. The sole practical solution to the growing lawsuit problem is to use tribunals. Advanced nations such as the UK has implemented the “*Tribunals, Courts, and Enforcement Act 2007*”, and has created a number of tribunals, which have been established to handle specific types of matters. There are two advantages to having tribunals for all types of matters. Primarily, cases are resolved quickly. Second, it aids in pinpointing the region with a high lawsuits rate. With this information at their disposal, lawmakers can investigate any gaps or ambiguities in the text of the legislation. India may now comfortably move ahead creating more courts of this type and shorten the duration of litigation by a few years, thanks to the efficacy of tribunals like the NCLT³¹.

³⁰ V.Gopalan, 'Birth of National Company Law Tribunal After Decades of Journey from Sachar Committee to Eradi Committee' (All India Reporter), CLC 2001

³¹ Shubhra Johri & Dr. Parag Narkhede, A Study of Literature Review On Insolvency and Bankruptcy Code, 8, (2) AEGAEUM JOURNAL, 2020